

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40973
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE GREGORIO ESTRADA,
also known as Jose,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-95-CR-307-7
- - - - -

August 20, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Jose Gregorio Estrada challenges his sentence for possession with the intent to distribute marijuana in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 18 U.S.C. § 2. Estrada contends that the United States Sentencing Commission violated his Fifth Amendment Due Process and Equal Protection rights when it promulgated Sentencing Guidelines that permit the leader of a conspiracy to receive a sentence less severe than that received by a minor participant in the conspiracy.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Estrada's argument is unavailing because he was not sentenced under the Sentencing Guidelines. Rather, he was sentenced pursuant to the terms of 21 U.S.C. § 841(b)(1)(B). A sentence imposed in accordance with § 841 violates neither the defendant's rights under the Due Process or Equal Protection Clauses. See United States v. Rojas-Martinez, 968 F.2d 415, 419-20 (5th Cir. 1992). Estrada's claim is also unavailing because a defendant cannot attack his sentence solely on the ground that a codefendant received a lesser one. See United States v. Boyd, 885 F.2d 246, 249 (5th Cir. 1989). Accordingly, Estrada's sentence is AFFIRMED.